

Customers that had acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995 are exempt from Gas Revenue Tax. See 86 Ill. Adm. Code 470.171. (This is a GIL).

March 25, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 10, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I was referred to you as a person who could give me an explanation of Section f of the attached document. I worked for an Illinois gas utility when this was originally passed in 1996. At that time we were told that any customer who had transported natural gas prior to March 1, 1995, would then be able to buy the commodity gas from the LDC and not be charged the 5% Public Utility Tax on the commodity portion of their monthly bill. In this specific case, I work with a customer who was acquired in August 1999 by a new owner. The local utility is now charging tax on the commodity portion of their monthly bill as they are saying that this is a new customer and does not qualify for the tax exemption on the commodity portion of the monthly bill. Please answer the following 2 questions:

1. In what cases would this exemption transfer and apply to LDC gas?
2. Does transporting gas by any 3rd party qualify for the exemption?

Feel free to give me a call if you have any questions.

DEPARTMENT'S RESPONSE:

The copy of the Department's administrative rules regarding this exemption that you had attached with your letter describes which entities may claim the exemption. See 86 Ill. Adm. Code 470.171. Subsection (f) of Section 470.171 provides:

"The exclusion is available only with respect to the customer that acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995. A qualifying customer must be the same legal entity which acquired the qualifying contractual rights. Related entities, such as subsidiaries, affiliates, or holding companies, may not claim the exclusion based upon

the qualifying contract of a separate legal entity. However, legal entities that have merely changed form, such as a partnership electing to become a corporation, that retain the exact same ownership are still considered the same legal entity for purposes of this exclusion. A legal entity that had acquired a qualifying contract and has merged with another legal entity or entities will still be considered the same legal entity if the surviving entity is the entity that had acquired the qualifying contractual rights.”

You may use the guidelines contained in subsection (f) to determine if the customer referenced in your letter qualifies for the exemption. Without detailed information regarding the “acquisition” by the new owner, we cannot provide you with a determination whether the customer qualifies for the exemption. In addition, we do not know what you mean by “does transporting gas by any 3rd party qualify for the exemption?” Persons who qualify for the exemption must have had acquired contractual rights for the direct purchase of gas or gas service from an out-of-State supplier or source on or before March 1, 1995. Who transported that gas into this State does not impact the requirements for the exemption.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk